

IN THE SUPREME COURT
OF THE SEMINOLE NATION

FILED
IN THE
SEMINOLE NATION SUPREME COURT

APR 21 2015

SEMINOLE NATION
JUDICIAL REVIEW COMMITTEE;
Jerry Haney, Judicial Chairperson
Jodie Owings, Judicial Secretary
Glenn Sharpe, Judicial Member

Petitioners,

vs.

SEMINOLE NATION OF OKLAHOMA
GENERAL COUNCIL, et al.,

Respondents.

Linda Stewart
CLERK OF THE SUPREME COURT

Case No. SC-CV-2014-02

ON APPLICATION TO SUPREME COURT TO ASSUME ORIGINAL
JURISDICTION TO HEAR, DETERMINE, AND ISSUE WRIT OF PROHIBITION

APPLICATION GRANTED, WRIT OF PROHIBITION ISSUED

TAYLOR, J.

In this case, the Petitioners are the Seminole Nation of Oklahoma Judicial Review Committee consisting of Jerry Haney, Chairperson; Jodie Owings, Secretary; and Glenn Sharpe, Member.

The Respondents are the legislative body of the Seminole Nation of Oklahoma and are known as the General Council. While the individual members of the General Council were named as Respondents initially in this case, they were not served with process and are hereby dismissed from the case in their individual capacity.

The Petitioners claim the Respondents met on the 25th day of September 2014, and passed Resolution Number TR 2014-92. Petitioners further claim the resolution is null and void, as it purports to terminate the employment of the Court Administrator of the Seminole Nation of Oklahoma and "hereby remove the members of the Seminole Nation Judicial Review Committee if Tresa Gouge remains Court Administrator of the Seminole Nation Court system (14) calendar days after this resolution is passed," all in violation of the Constitution of the Seminole Nation of Oklahoma.

The Respondents claim the Supreme Court lacks jurisdiction to hear and decide the case. They also claim they were within their constitutional authority when they adopted TR 2014-92.

Since the issue of the Court's jurisdiction has been raised, the jurisdictional issue will be addressed first.

The Seminole Nation has been in existence since time immemorial. It has developed to its current form through a process of ethnogenesis. As the larger group would move from place to place, it would encounter smaller bands and towns. These bands would be incorporated into the larger group, and as this cultural process took place, the people involved would create a new, shared group identity. This was a transformative process. Although these were distinct bands and towns, the people would seek unity with each other.

The bands originally were autonomous, and the band leader or leaders exercised all the elements of sovereignty. However, as the transformation took place, the band members gave up part of their independence as they interacted with members of the other bands.

The collective body matured and adopted changes that were generally thought to be improvements.

Most recently, the members of the Seminole Nation of Oklahoma, "in order to promote justice, to continue cooperation with Federal, State, and Local governments, to encourage the general welfare, to safeguard our interests, to promote social, educational and economic opportunities for our children and for ourselves, and understanding this to be the democratic way pertaining to democracy and self-government by the people of the Seminole Nation of Oklahoma do ordain and establish the Constitution of the Seminole Nation of Oklahoma." (Preamble, Constitution of the Seminole Nation of Oklahoma.) While the Preamble does not constitute substantive law, it is an introductory statement of the fundamental purposes and guiding principles of the full text.

The Constitution represents the will of the people, and as such it constitutes the ultimate sources of legislative authority. The Constitution is the foundation policy or cornerstone establishing the policy on which the Nation has decided to govern itself. The Constitution itself establishes the goals and objectives of the Nation's government. The "democratic way pertaining to democracy and self-government by the people" is clearly established.

Article III provides in Section 1, the "executive authority of the Seminole Nation of Oklahoma shall be vested in a Chief and Assistant Chief." Article IV, Section 1, provides: "The legislative body of the Seminole Nation of Oklahoma shall be known as the "General Council." Article XVI, Section 1, provides, "The judicial power of the Seminole Nation of Oklahoma shall be vested in one Supreme Court and such District Courts and other subordinate courts as may be established pursuant to law enacted by the General Council."

The Constitution of the United States provides in its Article II, Section 1: The executive Power shall be vested in a President of the United States of America. He shall hold his Office during the Term of four Years and, together with the Vice President, chosen for the same Term."

Article I, Section 1, provides: "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article III, Section 1, provides: "The judicial Power of the United States shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Article XI of the Constitution of the Seminole Nation provides that, "No official shall assume office under this Constitution until he or she shall take the following Oath of Office;

"I _____, do solemnly swear or affirm that I will faithfully execute the office of _____, and will to the best of my ability preserve, protect and defend the Constitution of the United States, and the Constitution of the Seminole Nation of Oklahoma."

Section 2 of the Bill of Rights of Article II of the Constitution of the Seminole Nation of Oklahoma provides, "Nothing in this Constitution shall be interpreted in a way that would change or adversely affect the rights and privileges the members of this body have as citizens of the United States."

The preambles and executive, legislative and judicial articles of both constitutions lead us to the conclusion the people of the Seminole Nation of Oklahoma understand this Constitution to be the democratic way pertaining to democracy and self-government.

The over-all structure of the three branches of the government clearly shows the intention of the people for the government to mirror the U.S. Constitution, complete with the concept of the separation of powers of the executive, legislative and judicial branches.

Article XVI, Section 2, clearly establishes {T}he original jurisdiction of the Supreme Court shall extend to a general superintending and administrative control over all inferior courts and all Agencies, Commissions and Boards created by law. The Supreme Court shall have power to issue, hear and determine writs of...Prohibition."

The Supreme Court clearly has jurisdiction to hear and decide this case.

Constitutional references contained earlier in this opinion and United States Supreme Court cases interpreting some of these issues are instructive in this case.

"Judicial Power" includes the Court's adjudicative power and its administrative responsibility. Our branch of government interprets the law and provides a forum for disputes to be resolved in an orderly manner. In order for the Supreme Court of the Seminole Nation to provide our mandated responsibilities, we must have control over the supervision and discipline of our Court Administrator, Court Clerk and other support staff.

Article III, IV and XVI contain introductory phrases which obviously require interpretation as to what they mean and what they include.

"Judicial Power" includes adjudicative and administrative or managerial activities. Inherent from "Judicial Powers" includes the authority to interpret the law.

The General Council has broad discretion to speak or act on behalf of the Nation, but this discretion is subject to limitation if it attempts to run against the constitutional authority of the Chief, or against the Constitutional Power of the Judicial branch of the Seminole Nation of Oklahoma. The actions of the General Council cannot be such as would keep the other co-equal branches from being able to carry out their constitutionally mandated functions.

As this Court has already noted in its Administrative Order No. 2014-1, Title 5 of the Statutes of the Seminole Nation provide that the Judicial Review Committee, subject to review by this Court, is the authority to remove the Court Administrator.

Even if Article IX of the Constitution were to apply to Court Personnel (which it does not), a person charged by the General Council with an offense is entitled to written notice and "an opportunity to answer before the General Council, (any) and all of the written charges."

Should the General Council feel the need to bring charges against any Court Personnel (except Magistrates whom the Council may remove by Statute, or Supreme Court Justices, removed only by a Judicial Council), the Council may file the charges with the Judicial Review Committee, which is responsible for conducting a hearing on said charges, and if the Council is not in accord with the findings of the Committee, it may appeal the Committee ruling to the Supreme Court for review.

The General Council abused its discretion by adopting TR 2014-92 in an attempt to terminate the employment of the Court Administrator and the Petitioners. TR 2014-92 also sought to terminate the employment of the Court Administrator and Judicial Review Committee members without giving them an opportunity to be heard in opposition to the allegations against them or be represented at such a hearing by the assistance of counsel.

Fundamental fairness is a major component of the Constitution of the Seminole Nation's effort to promote justice for the people. While we are not persuaded there was any attempt by the General Council to be unfair in the events leading up to this case, the passage of TR 2014-92, in addition to being unconstitutional, was also unfair.

Our system of government relies on checks and balances. Operating as intended, this allows each of the three co-equal branches to appropriately limit or "check" the powers of the other branches. This ensures the proper "balance" of power between the branches.

The Government of the Seminole Nation of Oklahoma exercises its power not as a unitary entity but via the three coordinate branches of the government (legislative, executive and judicial), each of which has its own prescribed powers and limitations under the constitution. In addition, the doctrine of separation of powers functions as a limitation on each branch of government's exercise of sovereign power. "The fundamental necessity of maintaining each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others has often been stressed, and is hardly open to serious question. So much is implied in the very fact of the separation of powers of the departments by the constitution and in the rule which recognizes their coequality." *Humphrey's Ex'r v. U.S.*, 295 U.S. 602, 629-630 (1935).

The Seminole Nation of Oklahoma will be best served when the branches of government work together. The Seminole people expect cooperation and collaboration between the branches of their government.

We hold TR 2014-92 to be in violation of the Constitution of the Seminole Nation of Oklahoma, and therefore null and void.

The Court Administrator shall remain in her position of employment and the Judicial Review Committee members shall continue to serve until their successors are selected and take their positions.

There are other issues which could be addressed in this opinion, but since the matters spoken to are dispositive of the case, the other issues will not be part of our decision.

Concur:

Wantland, C.J.

Wiley, J.

SO ORDERED this 21st day of April, 2015.

Joe Taylor, J.



William C. Wantland, C.J.



Roger Wiley, J.

